

A

REVIEW OF THE STATE OF THE ENGLISH NATION.

Saturday, March, 23. 1706.

I have the Satisfaction now to tell the World, the *Act for preventing Frauds Committed by Bankrupts* is pass'd; I confess, I think the Title more Deficient than the Bill — And were I to form its Title, I shou'd have call'd it, *An Act to prevent the Frauds, frequently Committed, both by Bankrupts and their Creditors;* for I think it is very apparent, that the Frauds of Creditors and Commissioners, set against those of the Bankrupt-Debtor, are so Parallel to each other, and of such equalliiy in their Degree, that I know not which stood most in need of an Act of Parliament to Rectifie them, and 'tis my hopes in the present Bill, that it will be an effectual Remedy for both.

I cannot however but a little Explain my self, in my going on upon this Subject,

as to some Difference between my Opinion of this Bill now it is Pass'd, and my Opinion of it before; I allow it to be one of the best Bills, that ever was produc'd in Parliament, since the *Habeas Corpus Act*, for Securing the Liberty of the Subject; but I do not say, it is capable of no Addition or Amendment, and on this Head, I desire to distinguish on my own Sence in this matter, and to Expound my own Words.

What I have said of the Commissioners, frequently Nam'd to Statutes, I see not the least Reason to recant; no, not the least Word of it; and whereas a certain Citizen has been pleas'd to Threaten me with his Cane upon that Subject; I take the liberty to tell him, he talks more with his Tongue, than he will attempt with his Hands, and that such

such Impertinence deserves no Notice, till he has put it in Practice, which on the least hint to the Author, he shall never want an Opportunity for.

The Grievance arising from the Scandalous Behaviour of the Commissioners, is in part rectifi'd by this Law; which Enacts, That if any Commissioner, shall Expend any of the Debtors Money, in Eating or Drinking, he shall for ever be disabled from being a Commissioner; Will any Man doubt, that the Commissioners deserve this Restraint from the Lords, and that Ruining of Bankrupts, and spending the Estate in Excesses, was their Practice? If they do, they fly in the Face, not of the House of Lords only, but of Truth it self, back'd with such Demonstrations as no Man can deny.

But I would not be mis-understood here, I do not mean all the Commissioners that sit on Statutes, I do not at all doubt, but there are Men concern'd in Commissions or Commissioners, that are Men of Honour and Modesty, Men of Justice and Temper; and such I hope will not think themselves concern'd in this — And this brings me to the Point.

I exclaim'd eagerly against the Unreasonable ness of that part of the Act, *and which is the only part of it I object against*, in which the Certificate for the Bankrupt is left to the Mercy of the Commissioners, to make or refuse, *without showing Cause* — Why they refuse it, but I was never so absolutely against that part, as to venture to lose the Bill by it, and I make no Question, but Men will see, that Equity will certainly relieve a Bankrupt, when he has fairly Surrender'd all his Estate, against Refractory Byast and Bri'd Commissioners, who having no Reasons to object against him, yet should Arbitrarily refuse to give their Certificate.

I shall therefore say no more to it, the Parliament seems to have left them room to act upon their Behaviour; if they will convince the Houses, that they require to be more effectually provided against, and that they will take all possible Advantages, to Ruine and Distress the Debtor, meet-

ly for the sake of being cruel, they will but further Convince the World, of their being a Grievance in the Law, and serve to move the Houses, to Erect staled Judges between Debtor and Creditor, and to lay them wholly aside.

This open Place therefore in the Act, seems to be left, to give those Gentlemen amongst them, who are Honest, and untainted with the Crimes of the common Crowd of Commissioners, room to distinguish themselves from a sort of Men, that have rais'd a Scandal, and thrown Dirt upon the very Employment it self

— And as I said, I would attempt something by way of Advice in this Paper, both to Debtor and Creditor, Bankrupt and Commissioners, this is what I mean, and I hope those Gentlemen will not take it ill, that I Presume to Counsel them, who are so much above Advice, that they are able to give it to others.

But to Commissioners and Creditors, who are concern'd in Commissions against their Bankrupt Debtors; give me leave to say; Pray, Gentlemen, consider the Nature of the Law against Bankrupts; it was a good and wholom Law, well design'd, and made with abundant Regard, both to the Safety of Debtor and Creditor, and with a great deal of Judgment; 'tis true, the Powers granted in it are Exorbitant, and almost too great to be entrusted to Creditors, and for that Reason, Commissioners were Named, and the vast Powers committed to them.

You that are Commissioners, are the Trustees, to whom the Legislative Power has committed this Trust, and as the Principal End of your Commission, is to secure and preserve the Estate; you really serve both Debtor and Creditor, you are plac'd between both, that neither may be Oppress'd, and that the great Extent of Power given by the Act, may not be made use of by eager Creditors, to the entire Ruine of the Debtor; you are Chancellors in the Case, and the Equity of the Oppress'd Debtor, lies in your Breasts; and give me leave to remind you, that had you Executed this High Trust, with

that

that Justice, Tenderness, Candor and Honour, that the Makers of this Law, expected from you, and which the Nature of the thing requires, there had been no need of this New Act, which only compells you to do what you had Power, but not Charity enough to do before.

It is plain, that in the Execution of this Law, you had Power to mitigate the Extremities of its Literal Constitution; if not, there had been no need of your Commissions; the Creditors were enough, and generally forward enough, to have put the Literal Sense of the Act in Execution — You were therefore put in, as before, that these Exorbitant Powers which were for Sundey Reasons, necessary to be Granted, might on occasion, be restrain'd by your Discretion, as Circumstances and occasion requir'd; this you have always Practis'd, and in several Cases restrain'd the Unlimited Powers of that Act; such as unravelling the Accounts, and Dealings of the Bankrupt by vast Retrospects; by which, if extended to the length the Law allows, innumerable Families would be Ruin'd, and no Man could Buy or Sell in Safety, since after any Act of a Bankrupt, committed by a Man, tho' long time before he fail'd; the Man may be deem'd a Bankrupt from that time, and for all he has Bought or Sold since, the Credit-side shall be brought to come in for the Dividend, and the Debtor-side be recovered by Law — If Commissioners did not restrain this, whither might it not extend, and yet it was necessary to have this Power Granted, to Unravel Cheats, and the tangled Skeins of a Debtors Frauds, which this Law was made to detect.

Here, Gentlemen, you are Lords, Chancellours, and, tho' sometimes formerly you may have made use of this Power, yet of late you have thought fit to accept of fair Accounts, and take the Balance to the use of the Bankrupt and his Estate.

In like Cases, you have thought fit to alleviate the Cruelty of the Law to the Bankrupt, and Encourage him

to discover his Effects, Capitulating with him for his Liberty, and sometimes have made Allowance to them of 2. 5. to 10 per Cent, for what they have Discover'd.

Really, Gentlemen, had your general Practice extended to so much Mercy, and had you upon all occasions given Bankrupts such Encouragement, there had not been these Clamours against your Proceedings, and this Law had perhaps never been sued for. —

But as you were descended to a Corruption of Management, Knavish and Designing Men got into Commissions, and made a Trade of the Statutes; Intolerable Expences, Feastings, and Excesses, were the Common Practice in these Cases, and all at the Charge of the Poor Debtor, *what ever you spent, be ow'd*, and the diminishing that Estate, left him the deeper in the Misery he was in; and thus you that were Erected to secure and save, and apply his Estate for his Creditors, have by perverting the end of the Law, and Betraying your Trust, Ruin'd tho People you shou'd have Sav'd.

As on the one Hand, you have Ruin'd many a Family, whose Destruction lies at your Door, for which Heaven will reckon with you, and Men abhor you; so let me tell you; 'tis you have made Knavish Bankrupts; 'tis owing to your Misbehaviour, that Frauds are frequently Committed by Bankrupts; nor can I have the full room to Reproach a P—— his, or any Man else with his Knavery, when they stop my Mouth, with telling me, how the Barbarous Treatment of Commissioners makes it absolutely necessary to a Man, to provide against them beforehand, and at least, to put themselves into such a Posture, as to be able to Bribe the Creditors with their own Money, to be Civil to them.

Now, Gentlemen, your Crimes have brought the Nations Justice upon you, and the same Authority, first trusted you with this Power, finding that the Ill use you made of it, has thought fit to take it from you, or at least to Limit it.